

1. PARTIES

The Montana Department of Corrections (DEPARTMENT) and **Dawson Community College, (CONTRACTOR)** enter into this Contract (**09-034-MCE**). The party's names, addresses, and telephone numbers are as follows:

Montana Department of Corrections
Montana Correctional Enterprises (MCE)
1539 11th Avenue
PO Box 201301
Helena, MT 59620-1301
(406) 444-3930

Dawson Community College

300 College Drive
Glendive MT 59330
(406) 377-9408

DEPARTMENT AND CONTRACTOR, AS PARTIES TO THIS CONTRACT AND FOR THE CONSIDERATION SET FORTH BELOW, AGREE AS FOLLOWS:

1.1 Background

DEPARTMENT receives a grant from the United States Department of Education for Workplace and Community Transition Training for Incarcerated Individuals (under the Higher Education Opportunity Act, Public Law 110-315). This grant provides funds to secure postsecondary education services from a qualifying postsecondary institution for qualifying Montana offenders (hereafter "student or offender") housed in prison and prerelease centers.

1.2 Eligibility

Congress, along with the United States Department of Education, defines eligibility requirements for this program. Only offenders who meet the education, age, offense, conduct, and estimated date of release requirements will be eligible to participate. DEPARTMENT will screen interested applicants by requiring an application and verifying data provided by offenders.

1.3 Participation

To be eligible for the training, in addition to the requirements set by the US Department of Education, offenders must commit to full participation in both classroom exercises and homework assignments. In addition, offenders who meet all grant eligibility requirements may be eligible to continue their secondary education for up to seven years, so long as federal funds are available.

Failure to attend the scheduled classes or fully participate in the classroom exercises will be cause for termination from the program and offenders may receive a disciplinary write-up, if appropriate.

It is the goal of DEPARTMENT that all offenders successfully complete the program and remain eligible for further education classes through a Montana-based college or university.

1.4 Success Rates

In accepting federal funds, DEPARTMENT has agreed to provide information on each offender's academic, employment, and reentry successes. To participate in the program, offenders must be willing to provide updates (at least quarterly) to DEPARTMENT regarding education, employment, and recidivism. This may be done by calling offenders or probation and parole officers

2. DUTIES/RESPONSIBILITIES OF BOTH PARTIES

A. DEPARTMENT agrees to:

1. Provide an orientation to CONTRACTOR staff regarding federal grant requirements and guidance at no cost to CONTRACTOR. This orientation will be scheduled at a mutually-agreed upon day and time;
2. Provide CONTRACTOR with a contact person to serve as DEPARTMENT'S primary Project Offender Work and Education Ready (POWER) coordinator;
3. Provide CONTRACTOR with applicable federal guidelines;
4. Promote course availability within the Dawson Regional Prison.
5. Screen all interested offenders for eligibility requirements;
6. Forward offender applications and enrollment information to CONTRACTOR in a timely manner;
7. Provide a communication mechanism between CONTRACTOR and enrolled students via direct care staff for completion of assignments and testing;
8. Pay for services within 30 days of receipt of invoice; and
9. Initiate quarterly conference calls to address the program, infrastructure, remaining fund balance, and needed assistance.

B. CONTRACTOR agrees to:

1. Attend an orientation regarding federal grant requirements hosted by DEPARTMENT;
2. Designate a contact person to serve as CONTRACTOR'S primary POWER coordinator;
3. Coordinate directly with Dawson Regional Prison regarding course delivery and logistics;
4. Schedule and enroll offenders in coursework leading to a certificate in Welding, or remedial Reading, Writing, or Math;
5. Provide required textbooks and program-related supplies to the facility based on the number of enrolled students. Text books will be added to the facility library and available for use by future students;
6. Provide live instruction on-site at a mutually-agreed upon time;
7. Provide courses in a condensed fashion, with no course exceeding 10 weeks in duration;
8. Provide grades to students;
9. Provide college credit to passing students;
10. Provide certificates and/or degrees to qualifying students;

11. Provide DEPARTMENT with a class roster, including the status of each student (pass, fail, withdrawn);
12. Provide program information to a third-party evaluator upon request; and
13. Maintain on-going communication with DEPARTMENT, including but not limited to quarterly conference calls.

C. DEPARTMENT and CONTRACTOR further agree to:

Comply with all state and federal requirements, including but not limited to those defined in:

1. Section 49-3-207, Montana Code Annotated; and
2. OMB Circular A-106, OMB approval No, 0348-0040.

3. COMPENSATION/BILLING

DEPARTMENT shall compensate CONTRACTOR for successful delivery of services, provided pursuant to Section 2, in the following manner:

- A. DEPARTMENT shall reimburse CONTRACTOR \$84.00 per credit hour, per student and up to \$100.00 per course, per student for required textbooks and supplies. The total annual per student amount for tuition and books will not exceed federal grant requirements of **\$1,500.00** (one thousand five hundred and 00/100 dollars) per student through September 30, 2009 and **\$3,000.00** (three thousand and 00/100 dollars) per student from October 1, 2009 through September 30, 2011 for the services described herein.
- B. Total services billed shall not exceed \$20,000.00 during the contract period without prior written approval from DEPARTMENT. FURTHER, the first \$4,474.00 of funding will expire on September 30, 2009 and any unspent balance will be reverted to the federal government.
- C. DEPARTMENT agrees to pay CONTRACTOR within 30 days following receipt of a correct invoice.
- D. DEPARTMENT may withhold payments to CONTRACTOR if CONTRACTOR has not performed in accordance with the terms of this Contract.
- E. The Contract number must be referenced on all invoices and correspondence pertaining to this Contract.
- F. This Agreement is contingent upon availability of federal grant funds under CFR 84.331.

4. AGENCY ASSISTANCE

To the extent possible, CONTRACTOR shall use its own facilities and equipment in providing the services set forth in Section 2. However, the parties recognize that services provided to DEPARTMENT may occur within the confines of a secure correctional facility necessitating the use of DEPARTMENT facilities and equipment including, but not limited to, access to inmate records, work space within a correctional facility, and telephone service (e.g., Montana State Prison and Montana Women's Prison do not allow wireless phones within facility).

5. TIME OF PERFORMANCE

This Contract shall be effective from the date of final contract execution through September 30, 2011. Educational services that begin prior to September 30, 2011 may continue beyond this period but must be invoiced and paid for prior to September 30, 2011. This Contract may, upon mutual agreement and according to the terms of the existing Contract, be extended for additional periods of time.

Upon expiration of this Contract, and in the absence of a new written agreement, the terms listed herein shall continue to govern the agreement between the parties until such time as a new Contract is signed.

6. LIAISONS AND NOTICE

- A. Larry Burke, MCE Vocational Director (406-846-1320, ext. 2425), 350 Conley Lake Road, Deer Lodge MT 59722, or successor serves as DEPARTMENT liaison and POWER Coordinator.
- B. Jim Cargill, President (406-377-9408), Dawson Community College, 300 College Drive, Glendive MT 59330 or successor serves as CONTRACTOR liaison.
- C. All notices and invoices required in this Contract shall be in writing, properly addressed to the liaison in (A) and (B) above, and mailed first-class, postage prepaid. All notices sent via U.S. Postal Service are deemed effective on the date of postmark. Notices and invoices mailed through another carrier (e.g., UPS or FedEx) are effective upon receipt.

7. OWNERSHIP AND PUBLICATION OF MATERIALS

All materials CONTRACTOR develops or utilizes (i.e., reports, spreadsheets, etc.) in performing the services set forth in Section 2 above shall be the sole property of DEPARTMENT.

8. COMPLIANCE WITH WORKERS' COMPENSATION ACT

CONTRACTOR is an agency of the State of Montana and is a program of Montana State University. Montana State University complies with the Worker's Compensation laws of Montana by participation in the Montana University System self-insurance program.

9. INSURANCE

CONTRACTOR is an agency of the State of Montana which is self-insured under the provisions of Title 2, Ch. 9, Montana Code Annotated. CONTRACTOR will maintain insurance required for state agencies as provided under Title 2, Ch. 9, Montana Code Annotated. The statutory limits of liability are \$750,000 for each claim and \$1.5 million for each occurrence. A certificate of insurance will be provided to Contracts Management Bureau, 1539 11th Avenue, Helena MT 59620, prior to the start of any work under this Contract.

10. ACCESS AND RETENTION OF RECORDS

CONTRACTOR agrees to provide DEPARTMENT, the Legislative Auditor, or their authorized agents with access to any records necessary to determine Contract compliance (Ref. 18-1-118, MCA). CONTRACTOR agrees to create and retain all records supporting the services rendered and/or supplies delivered for a period of three years after either the completion date of this Contract or the conclusion of any claim, litigation, or exception relating to this Contract taken by the State of Montana or a third party.

11. PUBLIC INFORMATION

CONTRACTOR recognizes that this Contract may be subject to public inspection pursuant to Article 2, § 9 of the Montana Constitution. DEPARTMENT has a limited ability to assert a privacy interest in the subject matter of the Contract particularly with respect to information which is in the nature of a “trade secret” as the phrase is defined in federal law. In any event, CONTRACTOR agrees to hold DEPARTMENT harmless from any injury caused, in whole or in part, by the review of this agreement by an entity authorized to do so pursuant to Article 2, § 9 of the Montana Constitution.

12. ASSIGNMENT, TRANSFER AND SUBCONTRACTING

CONTRACTOR shall not assign, sell, transfer, subcontract or sublet rights, or delegate duties under this Contract, in whole or in part, without the prior written approval of DEPARTMENT. No such written approval shall relieve CONTRACTOR of any obligation of this Contract and any transferee or subcontractor shall be considered the agent of CONTRACTOR. CONTRACTOR shall remain liable as between the original parties to the Contract as if no such assignment had occurred.

13. AMENDMENTS

All amendments to this Contract shall be in writing and signed by the parties.

14. COMPLIANCE WITH LAWS

CONTRACTOR must, in performance of work under the Contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by CONTRACTOR subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, CONTRACTOR agrees that the hiring of persons to perform the Contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by persons performing the Contract.

15. TERMINATION AND DEFAULT

- A. DEPARTMENT may, by written notice to CONTRACTOR, terminate this Contract in whole or in part at any time CONTRACTOR fails to perform as required in this Contract.
- B. Either party may terminate this Contract without cause by providing written notice to the other as described in this paragraph. The party desiring to terminate the Contract shall provide written notice to the other, which notice will establish a termination date not less than 30 days from the date of such notice. The termination of this Contract shall not limit any party's pursuit of remedies provided in this Contract or otherwise available under the laws of the State of Montana.
- C. DEPARTMENT, at its sole discretion, may, without 30 days notice, terminate or reduce the scope of this Contract if available funding is reduced for any reason.
- D. Failure on the part of either party to perform the provisions of this Contract constitutes default. Default may result in pursuit of a remedy for breach of Contract including, but not limited to, monetary damages or specific performance.

16. CHOICE OF LAW AND VENUE

The laws of Montana govern this Contract. The parties agree that any mediation, arbitration or litigation concerning this Contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees (Ref. 18-1-401, MCA).

17. INTEGRATION

This Contract contains the entire agreement between the parties and no statement, promises, or inducements made by either party or agents thereof, which are not contained in the written Contract, shall be binding or valid. This Contract shall not be enlarged, modified, or altered except upon written agreement signed by all parties to the Contract.

18. SEVERABILITY


A declaration by any court, or any other binding legal source, that any provision of this Contract is illegal and void shall not affect the legality and enforceability of any other provision of this Contract, unless the provisions are mutually dependent.

19. COMPLETED CONTRACT

DEPARTMENT cannot disburse any payments under this Contract until a fully executed original Contract is returned to the Department of Corrections, Contracts Management Bureau, PO Box 201301, 1539 11th Avenue, Helena, MT 59620-1301.

SIGNATURE

DEPARTMENT



Gayle Lambert, Administrator
Montana Correctional Enterprises

6/9/09

Date

CONTRACTOR

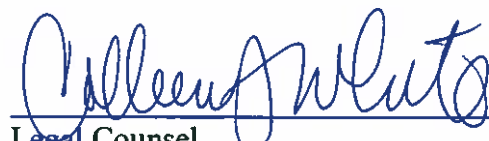


Jim Cargill, President
Dawson Community College

6/16/09

Date

Approved for Legal Content by:



Legal Counsel
Department of Corrections

6/11/09

Date